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IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant: Frank Camaioni : Examiner: Alvin C. Chin-Shue
Serial No. 10/660,988 : Group Art Unit: 3634
Filed: September 12, 2003 :
Title: ADD-ON EXTENSION LADDER :

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Mail Stop: Appeal Brief Patents

TRANSMITTAL OF APPEAL BRIEF

Enclosed for filing please find the following items:

1. Appeal brief (in triplicate) with Appendix of
Appealed Claims;
2. Credit Card Payment Form for fee for filing
Appeal Brief at small entity rate.

Respectfully submitted,

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Mark P. Stone 1/14/06
MARK P. STONE (Date of Deposit)
Reg. No. 27,954



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APPEAL BRIEF

I. INTRODUCTION -

This is an appeal from the final rejection by the Examiner of Claims 2 - 12 and 14 - 21 made in the Official Action dated August 18, 2005.


The appealed Claims 2 - 12 and 14 - 21 are reproduced in the Appendix attached hereto.

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II. REAL PARTY IN INTEREST -

Frank Camaione, the Applicant, is the real party in interest in this appeal.

III. RELATED APPEALS AND INTERFERENCES -

Applicant and Applicant's attorneys are unaware of any pending appeals, interferences or judicial proceedings which may be related to, directly affect, or be directly affected by, or have a bearing on the Board's decision in the present appeal.

IV. STATUS OF CLAIMS -

Claims 2 - 12 and 14 - 21 have been rejected. Claim 1 has been cancelled; and Claim 13 has been withdrawn from consideration as a result of a Restriction Requirement.

V. STATUS OF AMENDMENTS -

Claims 2 - 12 and 14 - 21 were placed under final rejection in the Official Action dated August 18, 2005. No response to this Final Action has been filed.

VI. SUMMARY OF CLAIMED SUBJECT MATTER -

Appealed independent Claims 11 and 17 are directed to a ladder extension adapted to be removably mounted to a conventional ladder, while appealed independent Claim 21 is directed to a combination of a ladder and a ladder extension section to be removably mounted to the ladder.

Independent Claim 11 recites that the ladder extension section, which is illustrated by reference numeral 2 in Figure 1, comprises a pair of opposed sidewalls (illustrated by reference numerals 4 and 6 in Figure 1), a plurality of transversely oriented rungs (illustrated by reference numeral 8 in Figure 1) which extended between the pair of opposed sidewalls, and means on at least one rung of the ladder extension for engaging at least one rung of a conventional ladder for removably mounting the ladder extension section to a conventional ladder (illustrated by reference numeral 10 in Figure 1). These features of independent Claim 11 are disclosed in Applicant's specification at page 8, second full paragraph. Independent Claim 11 further recites that the distance between the pair of opposed sidewalls of the ladder extension is greater than the distance between the opposed sidewalls of a conventional ladder such that the sidewalls of the ladder extension section extend beyond the sideswalls of a conventional ladder when the ladder extension section is mounted to a conventional ladder. This feature of the invention is disclosed in Applicant's specification, page 9,

first full paragraph, line 17 through page 10, line 1; and page 10, lines 11 - 18. This feature of the invention is illustrated by Figure 3B in which the ladder extension section designated by reference numeral 2 is shown to be wider and the conventional ladder designated by reference numeral 14 to which the ladder extension section is mounted.

Independent Claim 18 is directed to a ladder extension section similar to that defined by independent Claim 11, except that independent Claim 18 recites means on said ladder extension for engaging at least two rungs of a convention ladder for removably mounting the ladder extension section to a conventional ladder. The means for engaging at least two rungs of a conventional ladder are illustrated by reference numerals 10 in Figures 1, 2 and 4 of the drawings, and is disclosed in Applicant's specification at page 8, second paragraph. The remaining features of independent Claim 18 are illustrated and disclosed by the same drawings and the same portions of Applicant's specification as discussed above with respect to independent Claim 11.

Independent Claim 21 is directed to a combination ladder and ladder extension section adapted to be removably mounted to the ladder. The ladder extension comprises a pair of opposed sidewalls (illustrated by reference numerals 4 and 6 in Fig. 1 of the drawing and disclosed at page 8, second paragraph of Applicant's specification); a plurality of transversely oriented

rungs extending between the pair of opposed sidewalls (illustrated by reference numeral 8 in Figure 1 of the drawings and disclosed at page 8, second paragraph of Applicant's specification); means on the ladder extension section for engaging at least one rung of the ladder for removably mounting the ladder extension section to the ladder (illustrated by reference numeral 10 in Figure 1 of the drawing and disclosed at page 8, second paragraph of Applicant's specification); the distance between the pair of opposed sidewalls of the ladder extension section being greater than the distance between the opposed sidewalls of the ladder such that the sidewalls of the ladder extension section extend beyond the sidewalls of the ladder when the ladder extension section is mounted to the ladder (illustrated by Figure 3B of the drawings in which the ladder extension section 2 is wider than the ladder 14 to which the extension section is mounted, and disclosed at Applicant's specification, page 9, first full paragraph, line 17 through page 10, line 1, and page 10, lines 11 - 18).

VII. GROUND OF REJECTION TO BE REVIEWED ON APPEAL -

The following grounds for rejection are presented for review in this appeal:

1. Whether Claims 11 - 12 and 14 - 29 are indefinite under 35 U.S.C. Section 112, 2nd paragraph, for failing to particularly

point out and distinctly claim the subject matter which Applicant regards as the invention;

2. Whether Claims 11 - 12, 14 - 16 and 18 - 20 are anticipated under 35 U.S.C. Section 102(b) by Brugner (U.S. Patent No. 1,672, 020);

3. Whether Claims 2 - 8, 11 - 12, and 14 - 21 are anticipated under 35 U.S.C. Section 102(b) by Lee (G.B. 2118236);

4. Whether Claim 17 is obvious under 35 U.S.C. Section 103(a) over Brugner in view of Bauer (U.S. Patent No. 1,600,572);

5. Whether Claims 2 - 5, 12 and 21 are anticipated under 35 U.S.C. Section 102(b) by Hulme et al (U.S. Patent No. 4,519,478);

6. Whether Claims 2 - 5, 12 and 21 are anticipated under 35 U.S.C. Section 102(b) by Edmunds (U.S. Patent No. 124,940);

7. Whether Claims 8 - 10 are obvious under 35 U.S.C. Section 103(a) over Edmunds in view of Stanley (U.S. Patent No. 2,720,354);

8. Whether Claims 6 and 7 are obvious under 35 U.S.C. Section 103(a) over Edmunds in view of Parent (U.S. Patent No. 146,274);

9. Whether Claims 6 and 7 are obvious under 35 U.S.C. Section 103(a) over Edmunds in view of Lee; and

10. Whether Claims 2 - 7, 12 and 21 are obvious under 35 U.S.C. Section 103(a) over Jenkins (U.S. Patent No. 2,471,110) in view of Lee.

VIII. ARGUMENT -

Claims 11, 18 and 21 are the only independent claims presented for review on Appeal. If these claims are allowed, the rejected dependent claims will be allowable at least for the same reasons as their respective parent independent claims. Therefore, for the purpose of simplifying the issues on appeal, the arguments presented herein are directed only to independent Claims 11, 18 and 21.

With regard to the formal grounds of rejection raised against Claims 11 - 12 and 14 - 20 at page 2 of the Final Action, the Examiner states that although the preamble of the claims state that only the extension is being claimed, the limitations with respect to the conventional ladder render the claims indefinite. Applicant respectfully disagrees with this basis for formal rejection. On the contrary, it is necessary to recite features of a conventional ladder for the purpose of clearly defining the operating environment of the extension ladder and the functional relationship between the extension ladder and the

conventional ladder to which the extension is mountable. As such, Applicant respectfully submits that the inferential recitation of features of a conventional ladder do not render the claim indefinite because they are necessary to properly claim the ladder extension. Claims 11 - 12 and 14 - 20 define the claimed invention in a manner which will be understood by persons skilled in the relevant art, and therefore comply with 35 U.S.C. Section 112, 2nd paragraph, in all respects.

As discussed above, independent Claims 11 and 18 are directed to a ladder extension section adapted to be removably mounted to a conventional ladder, while independent Claim 21 is directed to a combination of a ladder and ladder extension section adapted to be removably mounted to the ladder.

Independent Claim 11 expressly recites that the distance between the pair of opposed sidewalls of the ladder extension section is greater than the distance between the opposed sidewalls of a conventional ladder such that the sidewalls of the ladder extension section extend beyond the sidewalls of a conventional ladder when the ladder extension section is mounted to a conventional ladder; independent Claim 18 expressly recites that the width of the ladder extension section is greater than the width of a conventional ladder to which the ladder section is mounted so that the sidewalls of the ladder extension section are beyond the sidewalls of a conventional ladder when the ladder extension section is mounted to a conventional ladder; and

independent Claim 21 expressly recites that the distance between the pair of opposed sidewalls of the ladder extension section is greater than the distance between the opposed sidewalls of the ladder such that the sidewalls of the ladder extension section extend beyond the sidewalls of the ladder when the ladder extension section is mounted to the ladder.

The advantages of an arrangement in which a ladder extension section extends beyond the ladder to which it is mounted are discussed in Applicant's specification. At page 9, last paragraph, starting at line 17, Applicant's specification states:

"...Preferably, the extension section 2 is wider than the upper section 14 of the conventional ladder so as to more evenly distribute the weight of the extension section along the length of the rungs of the upper extended ladder section 14 to which the extension section 2 is mounted...."

Applicant's specification, page 10, starting at line 11, also states:

"...Preferably, the width of the extension section 2 will be slightly greater than the width of the upper extended ladder section 14 so that the inner surfaces of the sidewalls 4 and 6 of the extension section 2 are close to, or abut against, the outer surfaces of the opposed sidewalls of the extended ladder section 14. In this manner, lateral movement of the extension section 2 relative to the extended ladder section 14 is either minimized or eliminated...."

Independent Claims 11 and 18 have been rejected as being anticipated by the Brugner patent; independent Claims 11, 18 and 21 have been rejected as being anticipated by the Lee publication; independent Claim 21 has been rejected as being anticipated by the Hulme et al patent; independent Claim 21 has

been rejected as being anticipated by the Edmunds patent; and independent Claim 21 has been rejected as being obvious over a combination of the Jenkins patent in view of the Lee publication.

With regard to the rejection of independent Claims 11 and 18 as being anticipated by Brugner, Applicant reiterates that both Claims 11 and 18 are directed to ladder extensions. Moreover, both independent Claims 11 and 18 recite that the width of the ladder extension is greater than the width of the conventional ladder to which it is removably mounted. The advantages of this arrangement have also been discussed herein. On the contrary, the Brugner patent expressly discloses a ladder extension 29 which is slightly narrower than the ladder section 2, exactly opposite to that disclosed and claimed by Applicant in independent Claims 11 and 18. The Brugner patent expressly states at page 2, lines 83 - 86 of the specification:

"...The ladder section 29 is slightly narrower than the ladder section 2 so that the sides of the ladder section 29 rest between the sides 11 of the ladder section 2..."

The Brugner patent, which teaches opposite to that of a feature expressly recited in independent Claims 11 and 18, clearly does not teach or suggest the ladder extension section expressly defined by independent Claims 11 and 18.

With regard to the rejection of independent Claims 11, 18 and 21 as being anticipated by the Lee publication, Applicant again notes that Claims 11 and 18 are directed to ladder extension sections removably mountable to a conventional ladder, while independent Claim 21 is directed to a combination of a ladder extension section and a ladder to which the extension section is removably mountable. On the contrary, the Lee publication discloses only an attachment to a ladder for stabilizing the ladder for preventing lateral sway of the ladder, and does not teach or suggest an extension for a ladder as disclosed by Applicant and defined by independent Claims 11, 18 and 21. Figure 1 of the drawing of the Lee publication illustrates a ladder attachment 10 in its operating position attached to a ladder 30. It is clear that the ladder attachment 10 does not provide, and is not intended to provide, an extension for the ladder 30.

With regard to the rejection of independent Claim 21 as being anticipated by the Hulme et al patent, Applicant reiterates that Claim 21 is directed to a combination of a ladder and ladder extension section in which distance between the opposed sidewalls of the ladder extension is greater than the distance between the opposed sidewalls of the ladder to which the extension is mounted, and means are provided on the ladder extension section for engaging at least one rung of the ladder. The Hulme et al patent discloses an extension ladder formed from an extension section removably mounted to a base section. In all embodiments

of the invention except that disclosed by Figure 9 of the drawings, the extension section is narrower in width than the base section, exactly opposite to the arrangement defined by Claim 21. In the embodiment of the invention illustrated by Figure 9 of Hulme et al, the narrower base section includes means for engaging the rungs of the wider extension section, exactly opposite to the express recitation of Claim 21 that means are provided on the ladder extension section for engaging a rung on the conventional ladder.

With regard to the rejection of independent Claim 21 as being anticipated by the Edmunds patent, Applicant submits that the Edmunds patent discloses a device for splicing two conventional ladders together, and does not disclose a conventional ladder in combination with a ladder extension. Edmunds, which advocates the use of two full size conventional ladders spliced together, defeats the intended objective of the invention defined by independent Claim 21, which is to eliminate the need to carry two full size ladders, but instead enables a workman to carry a single conventional ladder together with a shorter ladder extension.

It is well established that a rejection of a claim as being anticipated by the prior art requires the Patent & Trademark Office to establish a strict identity of invention between a single prior art reference and the rejected claim. Stated in other words, a rejection of a claim as being anticipated by the

prior art is inappropriate unless the applied reference teaches all features of the claim, as arranged in the claim. See, for example, Connell v. Sears, Roebuck & Co., 220 USPQ 193 (Fed. Cir. 1983). In the instant case, it is clear that there is no strict identity of invention between any of the prior art references applied to reject independent Claims 1, 11 or 21 based upon anticipation. As discussed herein, the applied references either teach directly opposite to a specific recitation or structural arrangement in the rejected claims, or simply do not recognize or disclose features of the claimed invention expressly recited in the rejected claims. In view of the significant differences between the disclosures of the applied prior art references and the inventions specifically defined by independent Claims 1, 18 and 21, none of the applied prior art references anticipates any of independent Claims 1, 18 or 21.

With regard to the rejection of independent Claim 21 as being obvious over a combination of the Lee publication and the Jenkins patent, Applicant initially notes that the Lee publication, for the reasons previously discussed herein, does not teach a ladder extension as disclosed by Applicant and specifically recited in independent Claim 21. On the contrary, the Lee publication discloses only a stabilizing attachment to prevent sway of a conventional ladder, but does not disclose a ladder extension section removably mountable to a conventional ladder. The Jenkins patent does not disclose a ladder extension section, but instead is directed to a specialized ladder for

hanging paper. The top section of the ladder does not engage lower rungs of the ladder section, but on the contrary, it is necessary to drill aligned openings in the top and bottom sections to retain these two sections together. Applicant submits that neither the Lee publication or the Jenkins patent teaches or suggests the ladder and ladder extension combination expressly defined by independent Claim 21. Moreover, as a result of the diverse nature of the individual teachings of these references, there is clearly no suggestion or motivation in the prior art itself to combine these references in any manner rendering independent Claim 21 obvious. On the contrary, the only basis for combining these references in the manner applied to reject independent Claim 21 must be derived from use of Applicant's own disclosure as a guide for selectively combining different features of different prior art references to reconstruct Applicant's claim. However, a rejection of a claim based upon hindsight reconstruction is improper as a matter of law. See, for example In re Fritch, 23 USPQ 2d 1780 (Fed. Cir. 1992); Micro-Chemical, Inc. v. Great Plains Chemical Co., Inc., 41 USPQ 2d 1238 (Fed. Cir. 1997); and Orthopedic Equipment Co. v. United States, 217 USPQ 193 (Fed. Cir. 1983).

IX. CONCLUSION -

Applicant respectfully submits, for the reasons addressed herein and throughout the prosecution of the present application, that independent Claims 11, 18 and 21 are allowable over the

prior art applied to reject these claims, and that independent Claims 11 and 18 comply with 35 U.S.C. Section 112, second paragraph, in all respects.

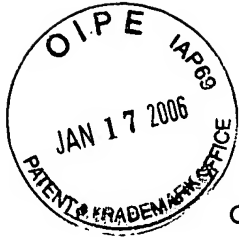
The remaining dependent claims on appeal are allowable at least for the same reasons as their respective parent independent claims.

Applicant respectfully requests that the rejection of independent Claims 1, 18 and 21 be reversed, and that all pending Claims 2 - 12 and 14 - 21 be allowed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark P. Stone', written in a cursive style.

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APPENDIX OF APPEALED CLAIM 2 - 12 & 14 - 21

Claim 2. The combined ladder and ladder extension section as claimed in Claim 21, wherein said means for engaging is integrally defined on said ladder extension section.

Claim 3. The combined ladder and ladder extension section as claimed in Claim 21, wherein said means for engaging is affixed to said ladder extension section.

Claim 4. The combined ladder and ladder extension section as claimed in Claim 21, wherein said means for engaging is formed in a L-shaped configuration.

Claim 5. The combined ladder and ladder extension section as claimed in Claim 21, wherein said means for engaging defines a channel for removably receiving therein a rung of said ladder.

Claim 6. The combined ladder and ladder extension section as claimed in Claim 21, wherein said means for engaging comprises a first pair of engagement elements adapted to engage one rung of said ladder, and a second pair of engagement elements adapted to engage another rung of said ladder such that said ladder extension section is removably mountable to said ladder along at least two separate rungs of said ladder.

Claim 7. The combined ladder and ladder extension section as claimed in Claim 6, wherein each of said engagement elements defines a channel for removably receiving therein a rung of said ladder.

Claim 8. The combined ladder and ladder extension section as claimed in Claim 21, comprising a support element pivotably mounted to said ladder extension section.

Claim 9. The combined ladder and ladder extension section as claimed in Claim 8, wherein said support element is mounted to said ladder extension section at the approximate midpoint thereof.

Claim 10. The combined ladder and ladder extension section as claimed in Claim 9, wherein said means for engaging and said support element each extend from the same side of said ladder extension section.

Claim 11. A ladder extension section adapted to be removably mounted to a conventional ladder, said ladder extension section comprising a pair of opposed sidewalls, a plurality of transversely oriented rungs extending between said pair of opposed sidewalls, and means on said ladder extension section for engaging at least one rung of a conventional ladder for removably mounting said ladder extension section to a conventional ladder, the distance between the pair of opposed sidewalls of said ladder

extension section being greater than the distance between the opposed sidewalls of a conventional ladder such that the sidewalls of said ladder extension section extend beyond the sidewalls of a conventional ladder when said ladder extension section is mounted to a conventional ladder.

Claim 12. The ladder extension section as claimed in Claim 11, wherein the distance between said pair of opposed sidewalls of said ladder extension section is selected such that the sidewalls of said ladder extension section abut against the sidewalls of a conventional ladder when said ladder extension section is mounted to a conventional ladder.

Claim 14. The ladder extension section as claimed in Claim 11, wherein said means for engaging comprises at least one engagement element extending from at least one of said plurality of rungs of said ladder extension section.

Claim 15. The ladder extension section as claimed in Claim 14, wherein said means for engaging comprises at least one said engagement element extending from at least two of said plurality of rungs of said ladder extension section.

Claim 16. The ladder extension section as claimed in Claim 14, wherein said at least one engagement element defines a channel for receiving therein a rung of a conventional ladder.

Claim 17. The ladder extension section as claimed in Claim 11, comprising a support element pivotably mounted to said ladder extension section.

Claim 18. A ladder extension section adapted to be removably mounted to a conventional ladder, said ladder extension section comprising a pair of opposed sidewalls, and a plurality of transversely oriented rungs extending between said pair of opposed sidewalls; the width of said ladder extension section being greater than the width of a conventional ladder to which said ladder extension section is mounted so that the sidewalls of said ladder extension section are beyond the sidewalls of a conventional ladder when said ladder extension section is mounted to a conventional ladder; and means on said ladder extension section for engaging at least two rungs of a conventional ladder for removably mounting said ladder extension section to a conventional ladder.

Claim 19. The ladder extension section as claimed in Claim 18, wherein said means for engaging comprises at least one engagement element extending from at least two of said plurality of rungs of said ladder extension section such that each said engagement element engages a different one of two rungs of a conventional ladder when said ladder extension section is removably mounted to a conventional ladder.

Claim 20. The ladder extension section as claimed in Claim 19, wherein at least a pair of said engagement elements extends from two of said plurality of rungs of said ladder extension section such that each said pair of engagement elements engages a different one of two rungs of a conventional ladder when said ladder extension section is mounted to a conventional ladder.

Claim 21. A combination ladder and ladder extension section adapted to be removably mounted to said ladder, said ladder extension section comprising a pair of opposed sidewalls, a plurality of transversely oriented rungs extending between said pair of opposed sidewalls, and means on said ladder extension section for engaging at least one rung of said ladder for removably mounting said ladder extension section to said ladder, the distance between the pair of opposed sidewalls of said ladder extension section being greater than the distance between the opposed sidewalls of said ladder such that the sidewalls of said ladder extension section extend beyond the sidewalls of said ladder when said ladder extension section is mounted to said ladder.